



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SN

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,318	08/31/2001	Wayne I Knigge	5328	1343
7590	02/02/2004			
John A. O'Toole General Mills, Inc. Number One General Mills Blvd. PO Box 1113 Minneapolis, MN 55440			EXAMINER MADSEN, ROBERT A	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/945,318	KNIGGE ET AL.
	Examiner Robert Madsen	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05 November 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3,5-39,41-43,46,47,51-62 and 65-67 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3,5-39,41-43,46,47,51-62 and 65-67 is/are rejected.
 7) Claim(s) 4,45,48-50,63 and 64 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) Interview Summary (PTO-413) Paper No(s) _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

1. The Amendment filed November 5, 2003 has been entered. Claims 40,44, and 68-76 have been cancelled. Claims 1-39,41-43,45-67 remain pending in the application.
2. In light of the amendment the rejection of claims 1-3,15,27-29,40-42,45,46,47,58, 66,67 under 35 U.S.C. 102(a) as being anticipated by Cook et al. (US 6233907 B1) is withdrawn because Cook et al. do not teach a vacuum sealed bag.
3. In light of the amendment the rejection of claims 1,2,9-12,14,15,26-29,32,33,41,58 under 35 U.S.C. 102(b) as being anticipated by Anderson (US 5500303) is withdrawn because Anderson do not teach a vacuum sealed bag, only vacuum sealed layers.
4. In light of the amendment the rejection of claims 1,2,4,9,10,13,15,29,40,41, under 35 U.S.C. 102(b) as being clearly anticipated by Croft (US 6074677) is withdrawn because Croft teaches the bag *in combination* with the carton.
5. In light of the amendment the rejection of claims 1,2,4,12,14,15,27-29,41-50,58 under 35 U.S.C. 102(b) as being clearly anticipated by Ours et al. (US 6062467) is withdrawn because Ours et al. do not teach a vacuum sealed bag.

Claim Objections

6. Claims 4, 48-50, 63 and 64 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous

claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

7. Regarding claims 4,48-50, independent claim 1 recites "the bag does not require an exterior carton", and dependent claims 4, 48-50 recite that the bag (claims 48-50) or the package comprising bag (claim 4) is enclosed by an exterior carton. Therefore, dependent claims 4, 48-50 are improper since one could infringe on claims 4,48-50 by having a bag enclosed by a carton, but not infringe on independent claim 1, since claim 1 "does not require a carton".

8. Regarding claims 63 and 64, independent claim 1 recites "the bag does not require oxygen scavengers", but claim 63 recites the package comprising the bag includes oxygen scavengers and claim 64 recites a layer of aluminum oxide coated polyethylene, a notoriously well known oxygen scavenger. Therefore, dependent claim 63 is improper since one could infringe on claims 63 by having a bag with oxygen scavengers, but not infringe on independent claim 1, since claim 1 "does not require a oxygen scavengers".

9. Claim 45 is objected to because of the following informalities: Claim 45 depends from cancelled claim 44. Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claims 1-3,5-39,41-43,46,47,51-62,65-67 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites "wherein the bag does not require an oxygen scavenger or an exterior carton and is vacuum sealed at least temporarily". These limitations are not supported by the specification.

12. With respect to the oxygen scavenger, the specification discloses that the package *may* include oxygen scavengers (Page 7, line 18 to Page 8, line 5, Page 12, lines 7-10), but the specification does not disclose how to determine when bag does not require an oxygen scavenger. For examination purposes *only*, this limitation is understood to mean an oxygen scavenger is a non-essential part of the bag.

13. With respect to an exterior carton, the specification discloses cereal embodiments where the vacuum sealed bags are placed within an exterior carton and that the present invention *improves* the ability to fill cartons with sealed bags (Page 11, lines 4-15, Page 13, line 24 to Page 14, line 1, Page 15, lines 10-23). At the same time, the specification states that vacuum packing of cereals and other products provides strength to ship cereals without the need of cartons or shipping cases, and the strength of the bags *may reduce or eliminate* the need for corrugated shipping cases (Page 10, lines 21-25, Page 15, lines 23-27). However, the specification does not disclose how

one identifies a vacuum sealed bag that does "not require an exterior carton". For examination purposes *only*, this limitation is understood to mean a bag that is sufficient strength/rigidity for storing or shipping without an exterior carton(e.g. it *may* be placed directly into bulk shipping containers).

14. With respect to the bag being "vacuum sealed at least temporarily", the specification does not define this term "at least temporarily", or how one identifies a bag that is vacuum sealed at least temporarily. It is not known if the seal is temporary due to opening by the consumer or , in the case of conventional coffee bags, the vacuum is released slowly during storage a gas generated from coffee creates a more positive pressure storage environment. For examination purposes, the bag will be considered vacuum sealed at least temporarily if the filled bag is held under vacuum for any moment of time.

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claims 1-3,5-39,41-43,46,47,51-62,65-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

17. Regarding claim 1, the term "at least temporarily " is a relative term which renders the claim indefinite. The term" vacuum sealed at least temporarily " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of

the scope of the invention. It is not clear for what duration of time is meant bag is vacuum sealed temporarily. It is not known if the seal is temporary due to opening by the consumer or , in the case of conventional coffee bags, the vacuum is released slowly during storage a gas generated from coffee creates a more positive pressure storage environment.

Claim Rejections - 35 USC § 102

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

19. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

20. Claims 1-3,10,13,15,27,28,41-43,46,47,51-58,65 are rejected under 35 U.S.C. 102(a) as being anticipated by Beer (US 6213645 B1)

21. Beer teaches a rectangular air-tight vacuum sealed reclosable bag (i.e. results in less than 1ppm hexanal), made from a single laminated sheet with an oxygen barrier (e.g. foil, which would result in an opaque bag), a moisture barrier(e.g. polyethylene), sealed with a pressure sensitive cold seal and a tin tie, clip or zipper closure, and containing breakfast cereal as recited in claims 1-3,10,13,15,27,28,41-43,46,47,51-58,65 (Column 1, lines 38-45, Column 2, lines 5-9 Column 3, lines 13-40, Column 4, lines 15-67,Column 5, line 7 to Column 6, line 3, Figures 5 and 6).

22. Claims 1-3,10,15-17,27-32,41-43,46,47,51,58 are rejected under 35 U.S.C. 102(b) as being anticipated by Kraft Foods Inc. (WO9812110).

23. Kraft Foods Inc. teaches a rectangular reclosable bag made from a single laminated sheet with an oxygen barrier, a moisture barrier, a metal layer (i.e. opaque) vacuum sealed, held within an open container during filling only, has a semi rigid portion (i.e. gusseted) and containing potato crisps ,rice grains or flakes, or flour as recited in claims 1-3, 10,15-17, 21,27-32,40-47,51,58 (Abstract Page 1,12, 17,20,37).

24. Claims 1,2,15,27,28,32, 41,43 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (GB 1290836).

25. Young teaches a sufficiently rigid, vacuum- sealed, gas-tight, plastic bag (i.e. no carton) and fully nitrogen charged (i.e. there must be less than 1ppm Hexanal) with breakfast cereal food including any food obtained by swelling, roasting or flaking (i.e. which would include any crush resistance or resistance to compression no less than about 7.0 PSIA.) as recited in claims 1,2,15,27,28,32,41,43 (See Page 1, lines 10-25,40-45,48-55, and 70-78).

26. Claims 1-3,41,58, 65 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ray (US 2370419).

27. See Column 1, lines1-35, Column 1 line 49 to column 2, line2, Column 3, lines 1-56, Column 4, lines 59-63, and Column 5, lines 10-23.

28. Claims 1,2, 12,15,27,28,41,58, 66,67 are rejected under 35 U.S.C. 102(b) as being anticipated by Leal Pereira Da Silva (US 5887409).

29. Leal Pereira Da Silva teaches nuts or tablets, which would include a crush resistance between 14.7 and 100PSIA and are normally damaged during transport in a metal drum (Column 1, lines 5-35), are vacuum sealed in co-extruded laminate rectangular bags with a heat seal at the open end such that the exterior has a texture (Column 1, lines 43, Column 2, lines 24-35, Figure 5 shows exterior texture) and the contents are essentially oxygen free (Column 2, lines 5-15), thus less than 1ppm hexanal, and the bags are shipped in containers, not requiring a carton since they are placed on store shelves as stand up bags (i.e. a semirigid portion) as recited in claims 1,2,12, 15,27,28,41,58, 59-61,66,67 (Column 3, lines 15-30).

Claim Rejections - 35 USC § 103

30. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

31. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

32. Claims 5-8, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraft Foods Inc. (WO9812110) as applied to claims 1-3,10,15-17,27-32,41-43,46,47,51,58 above, further in view of Giacoman (US 6251450 B1).

33. Kraft Foods Inc. teaches a potato chips bag, but is silent in teaching the location of any type of a premium or coupon as recited in claims 5-8 or two chambers as recited

in claim 8, or a pressure sensitive label affixed to the exterior of the bag as recited in claim 14. Giacoman teaches the conventional placement of a premium or coupon in a potato chips bag externally, internally, or in secondary compartment (Column 5, line 64 to Column 6, line 30), as well as it was notoriously well known to provide a coupon, or label, affixed to the exterior portion of the bag with a pressure sensitive adhesive (Column 1, line 64 to Column 2, line 8). Therefore, it would have been obvious to modify Kraft Foods Inc. and include a premium/coupon externally, with or without a pressure sensitive adhesive, internally, or in a secondary compartment since this is a well known feature of potato chip bags and one would have been substituting one conventional bag design for another.

34. Claims 18-23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer (US 6213645 B1) as applied to claims 1-3, 10, 13, 15, 27, 28, 41-43, 46, 47, 51-58, 65, further in view of Bedenk et al. (US 3708308).

35. Beer teaches breakfast cereal, but is silent in teaching biscuits, shreds, puffed pieces, their particular shapes as recited in claims 18-23 and 26. Bedenk et al. is relied on as evidence of the conventionality breakfast cereal such as shreds, biscuits, puffed pieces, such as spheres or flakes, and pellets (Column 1, lines 16-20, Column 4, lines 64-66). Therefore it would have been obvious to further include biscuits, shreds, puffed pieces, such as spheres or irregular flakes, pellets since one would have been substituting one cereal form for another. It would have been further obvious to select a pillow shaped cereal since biscuit forms include pillow shapes.

Art Unit: 1761

36. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beer (US 6213645 B1) as applied to claims 1-3,10,13,15,27,28,41-43,46,47,51-58,65 further in view of Schwab et al. (US 342635).

37. Beer is silent in teaching marbits. Schwab et al. teach it is well known to include marbits with cereal packages for a pleasing variety(Column 1, lines 5-34). Therefore, it would have been obvious to further include marbits with the cereal of Beer since it was known that this is a pleasing variety of cereal and one would have been substituting one conventional type of packaged cereal for another.

38. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beer (US 6213645 B1) as applied to claims 1-3,10,13,15,27,28,41-43,46,47,51-58,65 further in view of DiPoto (US 5558930).

39. Beer is silent in teaching unpopped popcorn. Dipoto teaches both cereal and unpopped popcorn require the same barrier packaging (i.e. moisture free-environment in (Column 1, lines 13-20). Therefore, it would have been obvious to include unpopped popcorn in the package of Beer since unpopped popcorn has similar packaging requirements and one would have been substituting one food product requiring a moisture barrier package for another.

40. Claims 9,11, 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beer (US 6213645 B1) as applied to claims 1-3,10,13,15,27,28,41-43,46,47,51-58,65 further in view of Galomb (US 6245367 B1).

41. Regarding claims 9 and 11, Beer is silent in teaching a translucent bag or transparent window. Galomb also teaches breakfast cereal bags with barrier layers and metal foil layers like Beer. However, Galomb further teaches if desired one may provide translucent walls or even a transparent window to view the product (Abstract, Column 4, lines 15-34). Therefore, it would have been an obvious matter of design choice to modify the walls of Beer to provide a translucent bag or window since Galomb teaches providing translucent walls or even a transparent window for a cereal bag may be done if desired.

42. Regarding claims 33-38, Beer is silent in teaching the breakfast cereal bag has two compartments, two different products (one particulate, one non-particulate), or the specific water activity, as recited in claims 33-38. Galomb teaches packaging two different products including, breakfast cereals, in a two compartment bag, with two different products, wherein the water activity is at least about 0.1 to 0.7 for a nonparticulate portion (other foods could be dry or gellable products) and 0.2-0.4 for the particulate (i.e. cereal would fall within the range) for the convenience of eating together (Abstract, Column 8, lines 32-63). Therefore, it would have been obvious to modify Beer and include a non-particulate product with the cereal with these water activities since this provides the convenience of eating the product from the bag.

43. Claims 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraft Foods Inc. (WO9812110) as applied to claims 1-3,10,15-17,27-32,41-43,46,47,51,58 above, further in view of Hellweg et al. (US 5523109)

44. Kraft Foods Inc. teaches cereal and flour, but is silent in teaching treating oat flour to prevent rancidity in oat flour containing products. Hellweg et al. teach treating oat flour to inactivate enzymes, and thus prevent rancidity, in oat flour cereals (Abstract, Column 3, lines 35-53). Therefore, it would have been obvious to treat oat flour to prevent rancidity since it was known that oat flour/out flour products to inactivate enzymes in oat flour prior to processing.

45. Claims 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leal Pereira Da Silva (US 5887409) as applied to Claims 1,2, 15,27,28,41,58,66,67 further in view of Carlblom et al. (US 52728439).

46. Leal Pereira Da Silva teaches oxygen sensitive food items that must be kept in an oxygen impervious laminate but is silent in teaching a particular permeability as recited in claims 59-61. Carlblom et al. teach 0.013-.05 cc per sq-in per day as recited in claims 59-61 for oxygen sensitive food bags (Abstract, column 17, lines 28-37, column 23-24) Therefore, it would have been obvious to modify Leal Pereira Da Silva and include teach 0.013-.05 cc per sq-in per day and the recited structures of claims 59-61 since one would have been substituting one bag feature for another for oxygen sensitive food bag.

47. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beer (US 6213645 B1) as applied to claims 1-3,10,13,15,27,28,41-43,46,47,51-58,65, further in view of Bianchini et al (US 5487940).

48. Beer teaches an oxygen barrier layer and a moisture barrier layer, but is silent in teaching a metallized polymeric composite and PP, PE, PET or PLA as recited in claim 62. Bianchini et al. teach barrier composite films for foods that have mechanical strength and provide oxygen and moisture barriers, like Beer, and Bianchini et al.. further include a metallized polymeric layer as the moisture barrier and polyethylene. (Abstract, Column 1, lines 5-13). Therefore, it would have been obvious to include a metallized polymeric layer as the moisture barrier and a substrate of polyethylene, since one would have been substituting one conventional moisture barrier for another for the same purpose: oxygen /moisture barriers film-based food packages with sufficient mechanical strength.

Response to Arguments

49. With respect to Beer '645, applicant argues that Beer does not teach a frangible material with a crush resistance or resistance to compression no less than about 7.0 PSIA. However, Beer teaches not only coffee beans, but ready to eat breakfast cereals, which would inherently include breakfast cereals flakes or puffs, all of which would have crush resistances of no less than about 7.0 psia.

50. With respect to Kraft '110, applicant's attention is directed to page 1 of Kraft. Kraft teaches a package of flowable products , including coffee (lines 2-6) , and other flowable products such as potato chips, rice grains or flakes, or flour (lines 32,33).

51. With respect to Young '836, applicant argues that Young does not teach the recited features of claim 1. Young does teach a sufficiently rigid, vacuum- sealed plastic bag

(without a carton) that is gas-tight and fully flushed with nitrogen. Thus there must be less than 1ppm Hexanal since (1) oxygen was removed by vacuum, (2) the bag was "fully flushed", and (3) the bag is gas-tight. Additionally Young teaches breakfast cereal food obtained by swelling, roasting or flaking, and these methods would produce cereals with a crush resistance or resistance to compression no less than about 7.0 PSIA (See Page 1, lines 10-25,40-45,48-55, and 70-78). Although Young teaches the bag *comprises* cereal and eggs (Page 1, lines 21-30), or even ham (lines 40-45), claim 1 does not exclude any items in addition to the frangible items in the bag.

52. With respect to Ray '419, applicant argues that Ray does not teach a frangible item having a crush resistance or resistance to compression no less than about 7.0 PSIA. Ray teaches cereals, frozen vegetables, and coffee (Column 5, lines 10-23), which would have a resistance to compression of no less than about 7.0.

53. With respect to claims 5-8, applicant argues that there is no suggestion to combine the references. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kraft teaches a package for potato chips. Giacoman teaches the conventionality of placement of a premium or coupon in a potato chips bag externally, internally, or in secondary compartment (Column 5, line 64 to Column 6, line 30). The substitution is

based on a potato chip containing bag, not on a method or apparatus of making the bag as argued by applicant.

54. With respect to claims 18-24 and 26, Beer teaches breakfast cereals and Bedenk is solely relied on as evidence of conventional breakfast cereal shapes and forms. Schwab et al. is solely relied on as evidence of the conventionality of including marbits with breakfast cereals. Thus one would have been substituting one conventional breakfast cereal for another.

55. With respect to claim 25, Beer teaches breakfast cereals in barrier packaging, and DiPoto teaches cereal and popcorn kernels require barrier packaging. Thus, since both require the same type of packaging, one would have been substituting one conventional food item required barrier packaging for another.

56. With respect to claims 33-38, Beer teaches breakfast cereal in a bag. Galomb teaches packaging breakfast cereal with a non-particulate, in two separate compartments, in the same bag for the convenience of eating them together from the bag. Thus, Galomb provides motivation for modifying the bag of Beer by adding an additional compartment to provide a convenient means for consuming nonparticulate food with breakfast cereal.

57. With respect to claim 39, Kraft Foods Inc. teaches cereal and flour. Hellweg et al. teach treating oat flour to inactivate enzymes, and thus prevent rancidity, in oat four cereals (Abstract, Column 3, lines 35-53). The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior

art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

58. Kraft teaches flour (broadly) in a mercantile oxygen barrier bag, and Hellweg et al. teach treating oat flour to inactivate enzymes and prevent rancidity. Thus it would have been obvious to pre-treat the oat flour in such a way for the Kraft bag, since the intended purpose is for mercantile use and this would further protect the flour.

59. Applicant's arguments with respect to claims 59-62 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

60. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

61. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

62. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

63. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

64. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700